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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Note verbale dated 20 February 1995 from the Permanent Mission of the Arabic Republic of Egypt to the United Nations Office at Geneva addressed to the secretariat of the Centre for Human Rights

The Permanent Mission of the Arab Republic of Egypt to the United Nations Office at Geneva presents its compliments to the secretariat of the Centre for Human Rights and, has the honour to enclose herewith the comment of the delegation of Egypt to the fifty-first session of the Commission on Human Rights concerning allegations mentioned in the written statement submitted by Human Rights Watch, a non-governmental organization in consultative status (category II) contained in document E/CN.4/1995/NGO/6.

This Mission requests that the enclosed comment be circulated as an official document of the fifty-first session of the Commission on Human Rights.

GE.95-12090 (E)

1. The written statement submitted by Human Rights Watch (HRW) and incorporated in document E/CN/4/1995/NGO/6 dated 31 January 1995 of the fifty-first session of the Commission on Human Rights contained false and biased allegations concerning the human rights situation in Egypt which were based on lies and allegations circulated by terrorists and repeated by some non-governmental organizations. Those allegations had been made before and the Egyptian authorities replied to them in detail at the time. If HRW had contacted the Egyptian authorities or the Mission of the Arab Republic of Egypt at Geneva in this connection, it would have received detailed replies to all the above-mentioned biased allegations, thereby saving the time and resources of the Commission on Human Rights that were required for the translation and publication of the above-mentioned document and also of the present document. However, the aim of HRW seems to be to publish false and biased allegations and bring some States into disrepute on a selective and unfair basis, even though HRW is well aware that Egypt always welcomes objective and constructive dialogue with the non-governmental organizations concerned with human rights issues, as illustrated by the numerous visits that those organizations have paid to Egypt, as well as their meetings with various officials and persons working in or concerned with this field.

2. The comments of the delegation of Egypt concerning the allegations made in the written statement submitted by HRW and contained in document E/CN.4/1995/NGO/6 are as follows.

1. Human rights violations by terrorists

3. The world is faced with intensive terrorist activity which has spread to many States, none of which have failed to condemn it and prosecute its perpetrators. In recent years it has even reached Egypt under the cover of extremist ideology that seeks to impose itself on society through incessant armed violence and attacks on peaceful citizens with a view to disseminating terror and instability. This terrorist activity has targeted symbols of authority and police officers with a view to the physical liquidation of senior security chiefs and the seizure of the weapons of soldiers assigned to guard public institutions and places of worship.

4. Terrorist attacks have also targeted the tourist industry in Egypt, which is a vital economic activity that constitutes a foreign-currency source of national income and influences the incomes of many individuals and families.

5. Terrorist attacks have also been made on monasteries and churches and some guards assigned to safeguard the security of religious dignitaries and worshippers in Upper Egypt have been killed. For example, five persons, including two monks, were killed during an attack on Al-Muharraq monastery on 11 March 1994.

6. Terrorist operations have also been directed against liberal intellectuals, artists and journalists who oppose their terrorist activity and condemn their acts.

7. Some human rights organizations have noted in their reports that, in 1993, armed groups bore the primary responsibility for the assassinations and physical liquidations and for widening the circle of their victims.

8. These terrorist acts constitute a flagrant violation of the fundamental freedoms of individuals and groups, as defined in international covenants and conventions, beginning with the right to life and the right to own property. They also constitute a direct encroachment on the personal freedoms of individuals, including the right to freedom of thought, belief and expression.

9. The Egyptian authorities have taken care to deal with this dangerous and exceptional phenomenon, which is threatening public safety and security and foreign visitors, within a framework of respect for law and order and have resorted to the use of armed force only in self-defence during security operations relating to the arrest of fugitive suspects in accordance with official orders and authorizations issued by the competent judicial authorities.

2. Investigation of allegations of torture

10. Any allegations concerning torture, even on the supposition that some of them are true, are solely a limited number of individual and exceptional cases which can under no circumstances be regarded as systematic violations or a methodical policy of practising torture, which is a legally punishable offence.

11. The number of allegations referred to in various reports of non-governmental organizations in 1992 and 1993 (181 allegations), for example, cannot be compared with the number of innocent civilians, policemen and tourists who fell victim to terrorism during the same period (122 dead and 281 injured).

12. Most of the victims of acts of torture have resorted to the courts, being aware of the independence of the Egyptian judiciary and the strict manner in which it applies the regulations and legislation that safeguard rights and freedoms. In fact, contrary to that organization's assertion in its report, some victims have been awarded financial compensation in respect of offences of assault and cruel treatment.

13. Reference should also be made to the judgement handed down by the Supreme State Security (Emergency) Court on 14 August 1993 in the case against the suspected assassins of Dr. Rifaat al-Mahgoub. In fact, the Court acquitted all the defendants of the charges brought against them after excluding all the evidence derived from their confessions which the Court regarded as having been extracted under torture. That judgement is a confirmation of the independence and impartiality of the Egyptian judiciary and its protection of rights and freedoms and, as such, refutes any allegations to the contrary.

3. Detention

14. The Egyptian Penal Code stipulates that unlawful detention constitutes an offence under the law and the perpetrator of such an offence is liable to the penalty prescribed in the legal provisions promulgated in this regard.

15. Detention is subject to the following procedures:

(a) In the case of the police, they have the right, in legally specified circumstances, to arrest and detain suspects for a period of not more than 24 hours and, during this period, the police must bring such detainees before the Department of Public Prosecutions (which is a judicial authority enjoying the same immunities as the judiciary).

(b) In the case of the Department of Public Prosecutions, detentions are effected on the basis of judicial orders issued by the Department in the light of its investigations of complaints and reports submitted to it. The Department has the right to detain suspects for a period of four days, before the expiration of which they must be brought before the judicial authority so that the latter can decide whether the suspects should be remanded in custody or released with or without bail depending on the progress and requirements of the investigations. Remand in custody can be ordered for successive periods amounting to a total of 45 days by a judge exercising summary jurisdiction or six months by divisions of courts of first instance (consisting of three judges). The courts hand down their decisions in this regard after hearing the statements of the accused and in the presence of the latter's lawyer and, in such cases, when the question of remand in custody is being heard, the accused is entitled to make any statement in his defence or to protest against the remand order.

(c) During a state of emergency, persons may be detained under the Emergency Act by order of the Minister of the Interior, subject to the rules laid down in the Act, if their detention is necessitated by a threat that they pose to public security. Any person so detained has the right to lodge a protest with the judiciary every 30 days and such protest is considered by a court consisting of natural judges enjoying judicial immunity.

16. Incommunicado detention does not exist, since the detainee has the legal right to contact his lawyer or any members of his family whom he might wish to notify. Movements of detainees are always recorded in registers kept for that purpose in accordance with the Prisons Act and their whereabouts can be ascertained by their relatives at any time. There is no administrative regulatory order that prohibits visits to prisons. The prison authorities work under the supervision and control of the Department of Public Prosecutions, which has the right to visit and inspect prisons and look into any complaints in this regard.

17. Within the context of their endeavours to stimulate public awareness of all the international human rights instruments, the Egyptian authorities have published the Declaration on the Protection of All Persons from Enforced Disappearance and have instructed the legislative and executive bodies concerned to take appropriate measures to implement and disseminate the principles contained therein on the initiative of the Egyptian Government.

18. The provisions of the Emergency Act do not render any of the provisions of the International Covenant on Civil and Political Rights inoperable, nor do they infringe the conditions set forth in article 4 thereof, from which no derogation may be made even if a state of emergency has been proclaimed. Moreover, the Act provides the safeguards and immunities needed to ensure that

rights and freedoms are respected. At the present time, the provisions of the Emergency Act are applied on a very limited scale to offences that threaten national interests and endanger the security and integrity of the State and its citizens.

4. The case of Abdel Harith Madani

19. All the allegations and inquiries concerning this matter were answered at the time in the following manner.

20. On 24 April 1994, the State Security authorities drew up an investigation report on Higher State Security Case No. 235 of 1994, concerning a terrorist organization led by Talaat Yaseen Hammam to which Abdel Harith Muhammad Ibrahim Madani and 27 other persons belonged. The investigation report contained information showing that the person in question was one of the leading members, being responsible for coordination between the various members and leaders of the organization, as well as the transmission of instructions and supervision of their implementation. The State Security authorities requested permission to arrest the 28 members of the organization and search their places of residence.

21. On the same date, the Office of the State Security Prosecutor authorized the legal measures needed for the arrest of the 28 accused persons and the search of their persons and homes with a view to the seizure of any unlicensed explosives, firearms, ammunition, organizational documents, printed matter, anti-government literature or inflammatory pamphlets that they might possess.

22. The unit that was duly assigned to arrest the above-mentioned lawyer proceeded to his office in the Pyramids district at about 11 p.m. on 26 April 1994, informed him of the Prosecutor's decision and immediately accompanied him to his principal residence situated in the Talibiya area of the Pyramids district where a search, conducted in the presence of the accused, led to the discovery of organizational papers and documents, as well as pamphlets and correspondence between him and imprisoned members of the organization. Following the search of the lawyer's principal residence, while the arresting unit was taking him to his secondary residence in the Warraq al-Arab district at Giza in order to search it, he complained of difficulty in breathing and was taken immediately to Manyal University Hospital at Qasr al-Aini for first-aid treatment. The hospital administration decided that he should remain there for treatment.

23. On 27 April 1994, the State Security Prosecutor was notified, in a report, of all the above measures that had been taken.

24. During the evening of 27 April 1994, the State Security Prosecutor received another report stating that notification had been received from Manyal University Hospital to the effect that the accused had died during the afternoon of the same day. A Deputy State Security Prosecutor immediately went to view the body and instructed the Coroner to carry out an autopsy in order to ascertain the cause of death. This was done on the afternoon of 28 April 1994.

25. The Attorney General ordered an investigation of the incident under his direct supervision and the case was entered in the record as No. 11/94 - Technical Office of the Attorney General.

26. The places of residence of the deceased were contacted several times after his death was notified by Manyal University Hospital. However, no one came. A message was sent to his birthplace at Qena due to the fact that none of his relatives had presented themselves.

27. The body was handed over to the family of the deceased, after they had identified it in accordance with the procedures in force, at the Zeinhom morgue from whence it was taken to his birthplace at Qena and buried there in the presence of his family who participated in all stages of the funeral. The cemetery was not placed under surveillance.

28. In such cases, the final forensic medical report cannot be completed until the results of the analyses and the laboratory, clinical and chemical tests have been received. This requires a certain amount of time, which is left to the discretion of the Department of Forensic Medicine in its capacity as the competent body in that regard. The Office of the Attorney General has endeavoured to expedite the report on more than one occasion.

29. The Department of Public Prosecutions has requestioned all the persons who participated in the said person's arrest in the light of the clarifications and explanations required by the Department of Forensic Medicine so that it can prepare its final report concerning the causes of death.

30. The Department of Public Prosecutions is continuing its inquiries with a view to establishing the truth and the brother of the deceased has brought a civil action in the investigations that the Department is conducting in this regard.

5. The case of Ibrahim Ahmad Ali Nasr

31. He was arrested (but not detained) on 19 September 1994 in connection with Higher State Security Case No. 855 of 1994.

32. He was charged with the following offences:

(a) Membership of an illegal clandestine group established for the purpose of advocating action to render the provisions of the Constitution and the law inoperable, preventing State institutions and public authorities from discharging their duties, and violating the legally-recognized personal rights and freedoms of citizens, terrorism being one of the means used to achieve that group's objective.

(b) Participation in a criminal conspiracy to commit acts of murder, use of force to unlawfully induce public officials to refrain from discharging their duties, forgery of official documents and possession of unlicensed weapons and ammunition intended to be used in an activity detrimental to public order and security.

33. He was released on bail on 14 December 1994.